

1 THE HONORABLE JOHN C. COUGHENOUR
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 STACEY VANDELL, *et al.*,

CASE NO. C18-0785-JCC

12 v.
13 Plaintiffs,

ORDER

14 LAKE WASHINGTON SCHOOL DISTRICT,

Defendant.

15
16 This matter comes before the Court on Plaintiffs' appeal of the Administistrate Law Judge's
17 ("ALJ") finding that Plaintiffs' claims are barred by the statute of limitations (Dkt. No. 23).
18 Having thoroughly considered the parties' briefing and the relevant record, the Court AFFIRMS
19 the ALJ's order in part and REVERSES and REMANDS the order in part.

20 **I. BACKGROUND**

21 Plaintiffs ("the Vandells") are the parents of two students ("the Students") who received
22 an education through Defendant ("the District") at Margaret Mead Elementary School, for the
23 2012–13 (kindergarten) and 2013–14 (first grade) school years. (Dkt. No. 3.) The Students were
24 eligible to receive a special education pursuant to the Individuals with Disabilities Education Act
25 (IDEA), 20 U.S.C. §§ 1400–50. (*See id.*) Pursuant to the IDEA, the District formulated
26 individualized education programs ("IEPs") for the Students, which are designed to assess a

1 student's abilities and provide academic plans and goals for the student. *See* 20 U.S.C. § 1414(d).
2 IEPs are designed to provide an eligible student with a free appropriate public education
3 ("FAPE"). 20 U.S.C. § 1401(9).

4 During the 2012–13 school year, the Vandells came to believe that the Students were not
5 progressing academically; they were isolated from the class, coloring in the back of the
6 classroom. AR 590. In the spring of 2013, the Vandells asked the District to reevaluate the
7 Students' IEPs, but the District refused to do so, causing the Vandells to believe that the District
8 was "out of compliance." AR 589–90. In May or June 2013, the District's principal told the
9 Vandells that the Students should repeat kindergarten because the District did not have the first-
10 grade resources that were necessary to assist the Students. AR 589.

11 In the summer of 2013, the Vandells were sufficiently worried about the Students and
12 their academic progress that they hired someone to evaluate them. AR 589. Through the
13 evaluation, the Vandells learned that one of the Students had dyslexia and both Students had
14 various other learning disorders. AR 593. The Vandells subsequently requested a meeting with
15 the District so that they could reevaluate the Students' plans. AR 589–90. At that meeting, which
16 occurred at the beginning of the 2013–14 school year, the Vandells asked the District if it could
17 help dyslexic students, and the District told the Vandells that it "did not recognize that learning
18 challenge." AR 590. The Vandells asked whether a specialized private school would better suit
19 the Students' needs. AR 590.

20 During the 2013–14 school year, Ms. Vandell testified that she saw some progress, but
21 ultimately her concern with the Students' academic progress grew. AR 75. The Vandells
22 acknowledged that the District was limited in the types of curriculums it could offer and, even if
23 the Students needed a specialized curriculum, it might not be available through the District. AR
24 604. Ms. Vandell testified that one of the District's teachers told the Vandells that they should
25 consider placing the Students in a private school. AR 78. Although the Vandells often
26 acknowledged the District's hard work for the Students, *see, e.g.*, AR 601, 604, 622, the

1 Vandells became increasingly aware that the District did not have the tools or resources to
2 provide the Students with FAPEs.

3 In the summer of 2014, the Vandells contacted a private school to inquire about the
4 Students' placement there, AR 611, and by August 2014, the Vandells planned for the Students
5 to attend private school. AR 613–14. Ms. Vandell told the private school that the Vandells were
6 excited that the Students would finally be in an "appropriate environment." AR 614. On August
7 28, 2014, the Vandells met with the District and had already retained their current counsel. AR
8 616–17. At the meeting, the Vandells requested that the District place the Students at the private
9 school. AR 616, 620, 623. The next day, Mr. Vandell acknowledged that a lot of time had
10 already been lost at the District and, because of that, it was critical that the Students were fully
11 submerged into a comprehensive curriculum and environment at the private school. AR 623. He
12 also said that the District's personnel had "candidly admitted to [the Vandells] in the past that
13 [the District] does not have the resources for such specialization." AR 623.

14 In early September 2014, the Students left Margaret Mead and began attending the
15 private school, where the Vandells observed the Students' positive progress. AR 246, 623, 628.
16 In the meantime, the District again reevaluated the Students and formulated new IEPs for them.
17 AR 141–42. At some point during this time, the Vandells allege that the District promised to
18 place the Students at the private school. (Dkt. No. 23 at 10.) The Vandells kept in close contact
19 with the Students' private school teacher, who provided feedback about the Students and about
20 the District's plans for the future. *See, e.g.*, AR 653, 664, 668, 682, 688. On December 3, 2014,
21 the Vandells said that the Students had "shown undeniable progress at [the private school]." AR
22 627. On December 5, 2014, the Vandells and the District attended an IEP meeting for the
23 Students. AR 141–42. During that meeting, Ms. Vandell stated that the District had failed, that
24 the data from the private school showed that the Students were progressing faster there than at
25 the District, and that the District was not the right environment for the Students. AR 144.

26 Ultimately, the Vandells allege that in January 2015 the District finalized new IEPs for

1 the Students. AR 309–10. According to the Vandells, these IEPs were essentially the same as the
2 failed IEPs from previous years. (Dkt. No. 23 at 6–7.) The District did not place the Students at
3 the private school and did not offer to pay private school tuition, and instead recommended that
4 they continue their educations with the District. (*Id.* at 10–11.)

5 On December 6, 2016 (more than two years after the December 5, 2014 meeting), the
6 Vandells began administrative proceedings by filing a due process complaint alleging that the
7 District failed to provide the Students with a FAPE while they were enrolled at Margaret Mead.
8 AR 352. The complaint specifically protests the District’s actions for the “2011/2012/2013/2014
9 school years,” which are the years that the Students attended Margaret Mead. AR 354. However,
10 the complaint also references harm suffered because of the District’s failure to place the Students
11 at the private school for the 2014–15 school year. AR 354–55.

12 In the administrative proceedings, the ALJ found that the Vandells’ claims were time-
13 barred because they filed their complaint on December 6, 2016, more than two years after they
14 knew or should have known about the alleged action forming the basis of the complaint. AR
15 233–34. The Vandells now appeal that ruling.

16 **II. DISCUSSION**

17 **A. Standard of Review**

18 When a party challenges an administrative decision under the IDEA, the Court “shall
19 receive the records of the administrative proceedings;” “shall hear additional evidence at the
20 request of a party;” and, “basing its decision on the preponderance of the evidence, shall grant
21 such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C). In IDEA
22 administrative appeals, the Court does not employ the typical highly deferential standard of
23 review of agency decisions. *See JG v. Douglas Cty. Sch. Dist.*, 552 F.3d 786, 793 (9th Cir.
24 2008). Instead, the Court gives “due weight” to the administrative proceedings, particularly
25 where—as here—the administrative decision was thorough, careful, impartial, and sensitive to
26 the complexities present. *See id.; Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1472, 1476

1 (9th Cir. 1993). The Court must consider the findings carefully and address the hearing officer’s
2 resolution of each material issue. *Cty. of San Diego v. Cal. Special Educ. Hearing Office*, 93
3 F.3d 1458, 1466 (9th Cir. 1996). After such consideration, the Court may accept or reject the
4 hearing officer’s findings in part or as a whole. *Id.* Additionally, “a finder of fact’s determination
5 of credibility receives deference on appeal, because access to live testimony is important to the
6 credibility finding.” *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1127 (9th Cir.
7 2003).

8 **B. IDEA**

9 1. Statute of Limitations

10 Under the IDEA, a due process complaint must be filed within two years of the date the parent knew or should have known about the alleged action forming the basis of the complaint.
11 20 U.S.C. § 1415(f)(3)(C). Washington applies this two-year statute of limitations. Wash.
12 Admin. Code § 392-172A-05080(2). Therefore, to measure the statute of limitations, only two
13 dates are relevant: (1) the date the complaint was filed, and (2) the date that the Vandells knew or
14 should have known about the actions forming the basis of their complaint.
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16 a. *Complaint filing date*

17 The ALJ found that the Vandells’ due process complaint was filed on December 6, 2016.
18 AR 247. However, the Vandells contend that the complaint was actually filed at least a day earlier.¹ They support this assertion with a declaration of the Vandells’ counsel saying that she
19 filed the complaint on an earlier date. (Dkt. No. 23 at 20.) However, there are three
20 independently-stamped copies of the complaint that all show that it was received by different
21 offices on December 6, 2016. AR 352, 357, 630. Therefore, even if the Court accepts counsel’s
22 declaration as additional evidence, a preponderance of the evidence shows that the Vandells’ due
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25 ¹ There is some confusion about the date that the Vandells allege they filed their complaint. (See
26 Dkt. No. 23 at 10, 20.) Nevertheless, they argue that the complaint was filed at least a day before the date stamped on the complaint by various entities.

1 process complaint was filed on December 6, 2016.

2 b. “Knew or should have known” date

3 i. 2012–13 and 2013–14 school years

4 The Vandells argue that they did not know that the District had failed to provide the
5 Students with FAPEs until January 2015, the date that the Vandells received draft IEPs. (Dkt.
6 No. 23 at 4–11.) The Vandells contend that they realized that the District had failed to provide
7 FAPEs because the January 2015 IEPs included the same goals as previously-failed IEPs and, in
8 the meantime, the Students were progressing in private school. (*Id.*) However, to the extent that
9 the complaint is about the 2012–13 and 2013–14 school years, AR 352–56, this argument is
10 illogical. The IEPs that Defendant developed in January 2015 did not inform the Vandells about
11 the quality of the education that the Students received *in the past*, but were instead a plan of how
12 to provide the Students with FAPEs *moving forward*. See 20 U.S.C. § 1414(d); *Adams v.*
13 *Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (“[An IEP] is a snapshot, not a retrospective.”).
14 The information that the Vandells would have had to rely on to determine whether the Students
15 were receiving FAPEs for the 2012–13 and 2013–14 school years would be information about
16 *those* school years, and each Student’s educational success or lack thereof resulting from those
17 years’ IEPs. The January 2015 IEPs are only relevant to claims made about the 2014–15 school
18 year. See *infra* Section II.B.1.b.ii.

19 The ALJ correctly highlighted evidence that the Vandells knew or should have known,
20 before December 6, 2014, that the District failed to provide the Students with FAPEs. AR 237–
21 53. As the ALJ found, a lack of progress by a student, on its own, is insufficient to trigger the
22 parent’s knowledge. See 20 U.S.C. § 1415(f)(3)(C). Instead, the “knew or should have known”
23 date is triggered when there is a lack of progress *that the parents attribute to the school district’s*
24 *failures*. See *id.*

25 With regard to the 2012–13 school year, in August 2013, the Vandells came to believe
26 that the District was “out of compliance” when it refused to reevaluate the Students because they

1 were not progressing in class. AR 590. This indicates that the Vandells “knew or should have
2 known” that the District failed to provide the Students with FAPEs for the 2012–13 school year
3 no later than August 2013.

4 The Vandells made many comments with regard to the 2013–14 school year which
5 indicate that they knew that the District had failed to provide the Students with FAPEs for that
6 school year prior to December 6, 2014. In a meeting at the beginning of the 2013–14 school year,
7 the District said that it didn’t recognize dyslexia as a learning disability. AR 590. At that point,
8 the Vandells considered moving the Students to private school so that they could be educated by
9 people who would “say the word dyslexia and say that they would recognize it.” AR 49. In April
10 2014, Ms. Vandell acknowledged that the District had a limited curriculum that may not be able
11 to enhance the Students’ educations. AR 604. In August 2014, the Vandells decided to remove
12 the Students from the District and enroll them into private school. AR 614. In making that
13 decision, Ms. Vandell told the private school that the Vandells were “so incredibly happy and
14 excited that [the Students] will finally be in an appropriate environment.” AR 614. On August
15 28, 2014, the Vandells met with the District and had already retained their current counsel. AR
16 616–20. The following day, when explaining the Vandells’ decision to transfer the Students to
17 private school, Mr. Vandell said that the District’s “personnel have candidly admitted to [the
18 Vandells] in the past that [the District] does not have the resources for such specialization.” AR
19 622–23. All of these facts indicate that by late August 2014, the Vandells knew or should have
20 known that the Students were not receiving FAPEs for the 2013–14 school year, and that the
21 District could be faulted for that failure.

22 As the 2014–15 school year progressed with the Students in private school, the Vandells
23 reported that the Students advanced tremendously. (*See* Dkt. No. 23 at 7.) The Vandells argue
24 that it was not until a few months into the school year that they knew that the District was at fault
25 for the Students’ failures because the Vandells had to monitor the Students’ progress at the
26 private school and ensure that they were not still suffering setbacks. (*Id.* at 9.) But the

1 overwhelming evidence of near-immediate academic success indicates that the Vandells should
2 have known close to the beginning of the Students' placement in private school that the
3 Students' academic failure was caused by the District. *See, e.g.*, AR 688.

4 Finally, on December 5, 2014, the Vandells attended an IEP meeting accompanied by
5 their attorney. AR 142. During that meeting, Ms. Vandell said that the District had failed, that
6 data from the private school showed that the Students were progressing faster there, and that the
7 District was not the right environment for the Students. AR 144. By this meeting, which was
8 more than two years before the Vandells filed their due process complaint, the Vandells certainly
9 knew that the Students had been denied FAPEs for the 2013–14 school year, and that the District
10 was to blame.

11 The evidence in the record clearly indicates that the Vandells knew or should have known
12 prior to December 6, 2014 that the District failed to provide the Students with FAPEs for the
13 2013–14 school year. Because the complaint was filed on December 6, 2016, the Court finds that
14 the Vandells' claims that the District failed to provide the Students with FAPEs for the 2012–13
15 and 2013–14 school years are time-barred.

16 ii. 2014–15 school year

17 Although the record is not clear with regard to this matter, the Vandells allege that they
18 were not made aware that the District would not be placing the Students at the private school or
19 paying for it until January 2015. AR 932–33. Depending on when the Vandells were aware that
20 the District was refusing to place the Students in private school (and refusing to pay for such
21 placement), complaints about that conduct may not be time-barred. It appears that the ALJ
22 assumed that the complaint was only regarding the 2012–13 and 2013–14 school years. *See* AR
23 230–34. As discussed above, those claims are time-barred. *See supra* Section II.B.1.b.i.
24 However, although the complaint is largely about the 2012–13 and 2013–14 school years, some
25 language in the complaint appears to be protesting the District's actions in the 2014–15 school
26 year. *See* AR 354. Therefore, to the extent the complaint alleges District failures in the 2014–15

1 school year, those claims may not be time-barred.

2 2. 2012–13 and 2013–14 School Years: Exceptions to the Statute of Limitations

3 The IDEA’s two-year statute of limitations is tolled if: (a) there were “[s]pecific
4 misrepresentations by the school district that it had resolved the problem forming the basis of the
5 due process hearing request; or (b) [t]he school district withheld information from the parent that
6 was required under this chapter to be provided to the parent.” Wash. Admin. Code § 392-172A-
7 05080. The Vandells argue that both exceptions apply and the statute of limitations should be
8 tolled. (Dkt. No. 23 at 11–13.)

9 a. *Specific misrepresentations*

10 In arguing that this exception to the statute of limitations applies, the Vandells vaguely
11 discuss the Students’ progress at the private school and the January 2015 IEPs, but do not allege
12 any specific misrepresentations made by the District. (*Id.* at 12–13.). Elsewhere in their briefing,
13 the Vandells allege that the District made representations that it would place the Students in
14 private school in the future. (*Id.* at 10.) But this is not a misrepresentation that the District had
15 solved the problem of the deficiencies identified in the Vandells’ complaint; it is a representation
16 about what the District intended to do in the future. Further, after the Court’s own review of the
17 administrative record, the Court cannot find any specific misrepresentations made by the District
18 that it had resolved any problems with the Students’ FAPEs. Therefore, the Court finds that the
19 first exception to the statute of limitations is inapplicable.

20 b. *Withheld information*

21 The Vandells do not allege any specific information that the District withheld. (Dkt. No.
22 23 at 12.) The Vandells vaguely argue that the District withheld that it would not be
23 recommending private school placement for the Students, when it had previously represented
24 that it would. (*Id.*) However, even if this was information that the District was required to
25 provide under the IDEA, the District’s decision not to place the Students in private school for the
26 2014–15 school year is irrelevant to the 2012–13 and 2013–14 school years. AR 352–56.

1 Further, after the Court's own review of the administrative record, the Court cannot find any
2 information that was withheld by the District that it was required to provide. Therefore, the
3 second exception to the statute of limitations is inapplicable.

4 3. 2012–13 and 2013–14 School Years: Equitable Tolling and Equitable Estoppel

5 The Vandells argue that even if their claims are time barred and even if both of the
6 exceptions to the statute of limitations are inapplicable, the Court should apply equitable tolling
7 or equitable estoppel to allow the Vandells' claims to survive. (Dkt. No. 23 at 13–15.) However,
8 a "court[] of equity should not act . . . when the moving party has an adequate remedy at law."
9 *Brown v. Holder*, 763 F.3d 1141, 1152 (9th Cir. 2014) (alteration in original) (citing *Morales v.*
10 *Trans World Airlines*, 504 U.S. 374, 381 (1992)). The two exceptions to the IDEA's statute of
11 limitations are exclusive, and bar any common law or equitable tolling of the limitations period.
12 See, e.g., *Moyer ex rel. Moyer v. Long Beach Unified Sch. Dist.*, 2013 WL 271686, slip op. at 7
13 n.71 (C.D. Cal. 2013); *Lakeview Neurorehab Ctr. Midwest, Inc. v. Palin*, 2010 WL 11619416,
14 slip op. at 7 (D. Alaska 2010). Because there is an adequate remedy at law, the Court cannot act
15 in equity to apply equitable tolling or equitable estoppel to the statute of limitations barring the
16 Vandells' claims.

17 **III. CONCLUSION**

18 For the foregoing reasons, the ALJ's order is AFFIRMED as to Plaintiffs' claims about
19 the 2012–13 and 2013–14 school years. The ALJ's order is REVERSED as to Plaintiffs' claims
20 about the 2014–15 school year and REMANDED to determine whether those claims are time-
21 barred and whether they have merit.

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2 DATED this 12th day of March 2019.
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7 John C. Coughenour
8 UNITED STATES DISTRICT JUDGE
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